

## General Terms and Conditions of RWTÜV e. V.

### I. Validity of these Terms and Conditions

1. Subject to any deviating agreements in individual cases, contracts may only be concluded with us in accordance with the following provisions; when placing an order the customer declares he agrees to our terms and conditions. Any contrary or deviating conditions on the part of the customer shall not be binding on us if we have not expressly recognised them; this must be done in writing. Our terms and conditions shall also apply if we render our service without reservation in knowledge of contrary or deviating conditions on the part of the customer.
2. The General Terms and Conditions shall apply for all our services (including, but not restricted to appraisal, testing and consultancy services) and for all duties arising from the obligation towards the customer. Our terms and conditions shall also apply for all future business relations with entrepreneurs and legal entities under public law.

### II. Conclusion of Contract

1. A contract with us shall be deemed to have been concluded only when the customer has accepted our offer without reservation or we send out our written acknowledgement of the order or we commence performance of the service. If we issue a written acknowledgement of an order this shall determine the content and scope of the contract where nothing different has been expressly agreed.
2. Any changes, ancillary agreements and additions, and any agreements on quality or the assumption of warranties must be expressly confirmed by us in order to be effective; this must be done in writing. This also applies with respect to cancellation of the present clause..

### III. Performance of Order and Customer's Obligations to Cooperate

1. Provided nothing different has been expressly agreed, we shall only be obliged to render the exact services provided for in the contract; we shall render such services according to the generally accepted technical rules and standards and the statutory specifications.
2. For any damage to or destruction of customer's objects due to the proper performance of our service we shall not be obliged to provide a compensation or replacement. If, as a consequence of or on the occasion of the proper performance of our service, our own equipment is damaged or destroyed or lost for reasons not attributable to us we shall be entitled to demand of the customer compensation or replacement under Art. 670 BGB (German Civil Code). Transport and, where relevant, return of customer's objects shall be implemented at the customer's expense and risk, but return shall only be implemented at the customer's express request. Where objects are retained by us our liability shall be limited to the duty to exercise due care and attention.
3. The customer shall inform us completely of all facts relevant to the performance of our service. We are basically not obliged to check that the data, information or other matters provided by the customer are correct and complete where there is no specific reason to do so given the circumstances of the individual case or where the order does not expressly cover this. We do not assume any guarantee for the correctness of the safety rules, regulations and programmes on which our inspections/tests and appraisals are based, unless such rules, regulations or programmes come from us or are themselves a subject of the inspection order. Nor do we bear any responsibility for the good order and functioning of the objects inspected with respect to technical safety where this is not expressly a subject of the order.
4. Where the customer must perform one or more actions of a cooperative nature to enable us to perform our service, he shall do this in good time and at his own expense; expenses will only be reimbursed if this has been expressly agreed; this must be done in writing. Where he does not fulfil his obligation to cooperate, does not do so in good time or does not do so in a proper fashion, we shall be entitled to charge him for the extra expense thus incurred. The right is reserved expressly to enforce any more extensive legal claims.
5. We are entitled to have the services which we have to provide performed by a subcontractor who has been carefully sought out by us and who appears to us to be suitable.
6. If we work outside our corporate site the customer shall be obliged to take all measures needed to ensure safety of movement where nothing different arises from the nature of the matter concerned or from an agreement with the customer. We shall be entitled to refuse performance of the service as long as the necessary measures have not been taken.

### IV. Periods and Dates

1. Periods and dates shall always be taken as approximate where no binding agreement has been made in individual cases; this must be done in writing. Where such periods and dates are not binding, we shall only be in default if the cus-

tomers has previously set us a reasonable deadline in writing for performance of the service owed and such request has been fruitless. In any case periods set shall only commence with the complete performance of all actions of cooperation due from the customer and – where a down-payment has been agreed – from the receipt of such payment. Any subsequent requests for changes or belated actions of cooperation on the part of the customer shall mean an appropriate extension of the performance times.

2. If the service to be provided by us is delayed owing to unforeseeable circumstances which are not our fault (e.g. labour disputes, operational disturbances, transport hindrances, lack of raw materials, official measures – in each case also at our suppliers – and failure on the part of another party to deliver to us in due time), we shall be entitled to withdraw in whole or in part from the contract or at our discretion to postpone completion of the service by the length of time the hindrance lasts. We will notify the customer without delay of the unavailability of the service or part of the service and reimburse him without delay for any counter-performance already provided if we withdraw from the contract. Claims for compensation are hereby excluded.
3. If the customer delays acceptance or violates any other obligation to cooperate, we shall be entitled to demand compensation for any damage we may suffer, including any extra expenses incurred.
4. If we are in default for reasons attributable to us or if it is impossible to fulfil our service obligation for reasons attributable to us or if we may refuse to provide the service under Art. 275/2 or /3 BGB (German Civil Code), we shall pay compensation according to the criteria laid down in section VIII.

### V. Acceptance

1. Where our service requires acceptance, the customer shall be obliged to do this. Minor defects which do not seriously impair the suitability of the service for the purpose contractually laid down shall not entitle the customer to refuse acceptance, without prejudice to his right to enforce statutory claims with respect to defects. In the case of part-services which are self-contained we may also demand part-acceptance.
2. If the customer refuses acceptance while violating subclause 1 of the present clause, acceptance shall be deemed to have been performed nevertheless.
3. Intellectual services shall be deemed to have been accepted if the customer, being an entrepreneur or legal entity under public law, does not expressly lodge objections in writing with a concrete description of individual defects within 30 days of the receipt of such services. In the case of such objections we shall check our services. If an objection lodged by the customer is found to be unjustified, he shall bear the extra expenses involved, unless he has only acted with slight negligence.

### VI. Prices and Payments

1. The decisive criterion is the price quoted by us or otherwise the price usually charged by us for the service concerned, plus statutory value added tax where applicable. If our customer is an entrepreneur or legal entity under public law, we shall be entitled within the context of continuous obligations and long-term contracts to increase our prices to a reasonable extent where there is an increase in cost prices; if the customer does not agree to such a price increase, he may terminate the contract within four weeks of the receipt of such an increase demand, otherwise the increase shall be deemed to be agreed. Our invoices shall be due for payment without discount and free of charges in accordance with an agreed payments schedule, and otherwise within two weeks of receipt of the invoice. If cheques are accepted in individual cases on the basis of express agreements, this shall only be done for the purpose of payment and also without discount. Any discount charges shall be borne by the customer; we will only recognise cheques as fulfilment of payment obligation when the relevant amounts have been credited without reservation to our account. We reserve the right to demand reasonable down-payments and advances. Where, within the framework of the order placed with us, third party services are provided for or approved, we shall charge the customer for these in the amount invoiced to us plus a supplement of 15%.
2. Where no fixed price has been agreed and it is established during the performance of a service that the costs will exceed the amount quoted to the customer as an estimate by more than 10%, we shall notify the customer of this. The customer shall be entitled in such a case to terminate the contract as described in Art. 649 BGB (German Civil Code). We shall then invoice only those services rendered up to that point. The same shall apply if we withdraw for an important reason from the contract or the contract is cancelled in mutual agreement.
3. If we have a number of amounts receivable from the customer, we shall determine against which debt the payment is to be set. The customer shall only be entitled to offset if his counterclaims are established with legal effect, are undisputed

or are acknowledged by us in writing. The same shall apply with respect to entrepreneurs or legal entities under public law for the enforcement of rights of retention.

4. If it becomes evident after conclusion of the contract that our claims towards the customer are jeopardized by the customer's inadequate ability to pay, we shall be entitled to agree to perform outstanding services only against advance payment or provision of security and to withdraw from the contract once a deadline set for this purpose has passed without result; number 2 sentence 3 of the present section shall apply accordingly.
5. In the case of default in payment the customer shall be liable to pay interest on arrears in the amount arising from Art. 288 BGB (German Civil Code) provided we cannot attribute any greater damage to the customer; in addition we shall be entitled to charge a general fee of € 5 per reminder issued.

#### **VII. Notice of Defects and Withdrawal**

1. If we provide a defective service the customer shall give us the opportunity to attempt at least twice to rectify the service within reasonable periods where this is not unreasonable in the individual case or there are no special circumstances which justify immediate withdrawal on the part of the customer, taking into account the interests of both sides. We shall in any case have the choice between rectifying the defect and supplying a defect-free item. If the attempt to rectify fails, the customer shall be entitled to reduce payment or withdraw from the contract; claims for compensation shall then only apply in accordance with section VIII. There shall, however, be no entitlement if the nonconformity in relation to the quality due is only minor.
2. Regardless of the cases described in subclause 1, the customer shall only be entitled to withdraw if we are responsible for the violation of obligation on the basis of which the withdrawal is to be explained.
3. We shall only assume a warranty for fulfilment of estimates or forecasts where this has been expressly agreed.
4. Issuance of a test certificate does not imply, beyond the specific content of the test report, any statement on the usability or quality of the item that has been tested. The same applies with regard to reports issued in the context of management system certifications.
5. If the customer is an entrepreneur or legal entity under public law, claims regarding evident defects must be made without delay, in the case of concealed defects without delay after their discovery – but within the statutory warranty period.

#### **VIII. Liability**

1. We are basically only liable to pay compensation for our wilful and grossly negligent action, for any culpable violation of major obligations, where a quality warranty has been assumed, in the case of default and in those cases where, for reasons attributable to us, the claim to the service is excluded under Art. 275/1 BGB (German Civil Code) or the service may be refused by us under Art. 275/2 BGB (German Civil Code). In terms of amount our duty to pay compensation is limited in cases of negligence towards entrepreneurs and legal entities under public law to compensation for foreseeable damage typical for the contract. Furthermore in cases of simple negligence, liability for damage to property and pecuniary damage is excluded; reference should be made to Section III. subclause 2 of the present terms and conditions.
2. With respect to entrepreneurs and legal entities under public law our liability for damage to property and pecuniary damage due to negligence is limited for each case of such damage to € 2,600,000.
3. Liability for damage arising from impairment of life, physical injury and impairment of health shall be unaffected by the foregoing liability provisions.
4. Where, under the foregoing provisions, our liability to pay compensation is excluded or restricted, this shall also cover the personal liability of our executive bodies, authorised experts/inspectors, employees and other co-workers, representatives and persons assisting us in the performance of our work and shall also apply with respect to all claims arising from impermissible action (Arts. 823 ff. BGB (German Civil Code), but not to claims under Arts. 1, 4 ProdHaftG (German Product Liability Act)).
5. We shall only be liable for the restoration of data if the customer has ensured that such data can be reconstructed from other data with a reasonable amount of effort. The customer is in particular obliged to back up data and programs at intervals appropriate to the application on a regular basis, at least once a day, in machine-readable form and hence to guarantee that such data and programs can be restored with a reasonable amount of effort.

#### **IX. Statutory limitation**

1. With respect to entrepreneurs and legal entities under public law contractual claims arising from violations of obligations shall be limited to one year from the beginning of the statutory limitation period. This shall not include claims concerning defects for which the statutory limitation period is 5 years or more.

2. The statutory limitation periods shall remain unaffected by the foregoing provisions in the following cases: (i) for damage arising from impairment of life, physical injury or impairment of health; (ii) for other damage based on wilful or grossly negligent violation of obligation by ourselves, our statutory representatives or persons assisting us in the performance of our work; (iii) for the customer's entitlement to withdraw from the contract in the case of a violation of obligations for which we are responsible and which is not due to a defect in the object of purchase or the works; (iv) for claims due to malicious silence with regard to a defect or arising from a quality warranty in the meaning of Art. 444 or Art. 639 BGB (German Civil Code); (v) for claims relating to the reimbursement of expenses under Art. 478/2 BGB (German Civil Code).

#### **X. Copyright**

1. Our work may not be passed on or used commercially beyond the purpose laid down by contract, and in particular it may not be published, without prior written permission. The customer bears sole and exclusive responsibility for compliance with the statutory provisions applicable for the use of our work (especially the provisions of competition law), and in particular he is responsible for the content of any advertising; he must indemnify us with respect to all and any claims by third parties and all necessary expenses these involve.
2. Subject to any deviating agreements in individual cases, we grant the customer a simple right of use in each case to our services covered by copyright, where this is necessary for the contractually compliant use of the services which are the subject of the contract.

#### **XI. Placement of performance and assignment**

1. The place of performance for all services is the registered office of our company.
2. Assignment or pledging of claims to which the customer is entitled as a result of the business relationship with us is hereby excluded.

#### **XII. Place of jurisdiction and applicable law**

1. The place of jurisdiction for all claims arising from the business relationship with respect to entrepreneurs and legal entities under public law is the registered office of our company. This also applies for claims from cheques and for tortious claims and third party notices. We are, however, also entitled to take action against the customer at his general jurisdiction.
2. In the case of cross-border services the registered office of our company shall be the exclusive legal venue for all disputes arising from the contractual relationship (Article 17 European Convention on Jurisdiction – "1968 Convention" - or Article 23 European Council Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters). We reserve the right, however, to take legal action against the customer at his general legal venue or to engage any other court which is competent under the 1968 Convention or the European Council Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.
3. For all business and legal relations between the customer and us the law of the Federal Republic of Germany shall apply exclusively. Application of the United Nations Convention on the International Sale of Goods (CISG) is hereby excluded.

#### **XIII. Concluding provisions**

1. If one or more of the foregoing conditions are or become ineffective this shall not affect the effectiveness of the other provisions. The ineffective conditions shall be replaced by such provisions as come closest to fulfilling the economic purpose of the contract and to preserving to a reasonable degree the mutual interests of the parties.
2. All earlier General Terms and Conditions are hereby superseded.

Statement according to Art. 33 BDSG (German Data Protection Act): Customers' data is processed electronically.

Status: 1. January 2005